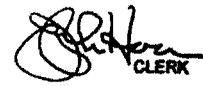


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED

OCT 10 2012


CLERK

*
JESSICA BUUS, *
*
Plaintiff, *
*
vs. * CIV. 12- 4173
*
* COMPLAINT
RICHARD JACOB STELZER, THE *
UNITED STATES OF AMERICA, AND *
THE UNITED STATES DEPARTMENT *
OF THE ARMY *
*
Defendants. *

Comes now the Plaintiff, Jessica Buus, and for her complaint against the above named Defendants, states and alleges as follows:

GENERAL ALLEGATIONS

1. Plaintiff brings this claim under the Federal Tort Claims Act, 28 U.S.C. §2671, et seq., 28 U.S.C. §1346(b), and other applicable law.
2. That the United States District Court has jurisdiction in this matter pursuant to 28 U.S.C. §1346(b) , 28 U.S.C §1332, and other applicable law.
3. That the amount in controversy exceeds the jurisdictional amount set forth in 28 U.S.C. §1332, and other applicable law.
4. That venue is proper under 28 U.S.C. §1391(b) and other applicable law.
5. The Plaintiff, Jessica Buus, is a resident of the state of South Dakota.
6. That the Defendant, Richard Jacob Stelzer, is a resident of Pueblo, Colorado.

7. That at all times relevant to this Complaint, the Defendant, United States of America, acting through its Department of the Army, was the owner of a 2007 Ford Expedition.
8. That on July 10, 2010, the Defendant, Richard Jacob Stelzer, was operating the 2007 Ford Expedition owned by the United States.
9. That at approximately 10:40 pm, the Plaintiff was a passenger on a motorcycle driven by Brian Iverson traveling south bound on North Cliff Avenue, in Sioux Falls, South Dakota.
10. That the Defendant, Stelzer, was traveling east bound on 60th Street North when he came to the intersection of 60th Street North and North Cliff Avenue.
11. That the intersection of 60th Street North and North Cliff Avenue is a regulated intersection with a stop sign for traffic coming from the east towards Cliff Avenue.
12. That Defendant Stelzer failed to stop and yield at the stop sign and pulled out in front of the motorcycle driven by Brian Iverson.
13. That as a result of the actions of Defendant Stelzer, the 2007 Ford Expedition collided with the motorcycle driven by Iverson. As a result of the collision the Plaintiff was thrown from the motorcycle and sustained injuries that required her transportation to Sanford Hospital by Emergency Services personnel.
14. That on March 26, 2012, the Plaintiff submitted her Administrative Federal Tort Claim in the amount of \$150,000, as required by 28 U.S.C. §2675 to the United States Department of the Army.
15. The United States Department of the Army, acting by and through Larss G. Celtnieks, Colonel, US Army, Chief, Tort Claims Division, denied the Plaintiff's Federal Tort Claim by a letter dated August 28, 2012. The Department of the Army

concluded that there was no liability on the part of the Department of the Army because the operator of the 2007 Ford Expedition, Defendant Stelzer, was not acting within the scope of his employment with the United States Army at the time of the collision.

16. That the collision as described herein, was caused by Defendant Stelzer's negligence and failing to stop and properly yield the right-of-way to the motorcycle driven by Brian Iverson. Furthermore, Defendant Stelzer was given a citation for failure to yield.
17. That the 2007 Ford Expedition being driven by Defendant Stelzer was being operated in a negligent and careless manner at the time of the collision.
18. That Defendant Stelzer was negligent per se.
19. That the negligence and carelessness of Defendant Stelzer, was the direct and proximate cause of injuries and damages suffered by the Plaintiff, Jessica Buus.
20. That as a direct and proximate result of the negligence of the Defendant Stelzer, the Plaintiff has suffered injuries to her body that are permanent and disabling. Plaintiff has experienced and will continue to experience in the future, great pain, suffering, mental anguish, physical and mental impairment, loss of enjoyment of life, and has incurred, and in the future will incur, expenses for medical care, travel and other expenses, future physical and mental impairment, and has suffered a loss of employment, wages and diminution of past and future earning capacity, loss of employability, and employee benefits.
21. That as a direct and proximate result of the negligence and carelessness of the Defendant Stelzer, the Plaintiff has special damages for past medical bills in an amount to be determined.

COUNT 1 FEDERAL TORT CLAIMS ACT

22. The Plaintiff realleges paragraphs 1-19, herein as if fully set forth.
23. That Defendant Stelzer, at all times material hereto, was acting within the scope of his employment with the United States Department of the Army.
24. That the Defendants, the United States of America and the United States Department of the Army, are vicariously liable by way of respondeat superior for the acts of their employees and/or agents.
25. That if the Defendant, the United States of America, were a private person, he would be liable to the Plaintiff under these circumstances in accordance with the laws of the State of South Dakota.


COUNT 2 NEGLIGENCE

26. The Plaintiff realleges paragraphs 1-25, as if fully set forth herein.
27. That the Defendant Stelzer was negligent in the operation of the 2007 Ford Expedition, and has caused damages to the Plaintiff as set forth in this Complaint.

WHEREFORE, the Plaintiff prays for relief as follows:

1. For judgment in favor of the Plaintiff and against the Defendants in an amount to be determined at trial.
2. For the Plaintiffs costs and disbursements.
3. For such other and further relief as the Court may deem proper.

Dated this 10th day of October, 2012.

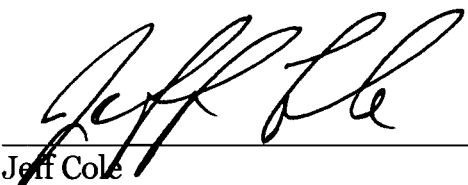


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DEMAND FOR JURY TRIAL

Comes now the Plaintiff, Jessica Buus, by and through her attorney of record, Jeff Cole, of Zimmer, Duncan and Cole, and hereby demands a trial by jury on all issues triable of right by jury.



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